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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,856	10/01/2001	Daisuke Kitazawa	214418US2	4045

22850 7590 03/10/2006

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
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EXAMINER

NGUYEN, TUAN HOANG

ART UNIT PAPER NUMBER

2643

DATE MAILED: 03/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/965,856

Applicant(s)

KITAZAWA ET AL.

Examiner

Tuan H. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>IDS</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Claim 1 is not properly described in the application as filed, and the specification was not contain a written description allocating the radio resource to the radio terminals or communication connections in said first group with higher priority than the radio terminals or communication connections in said second group based on a priority order for allocating the radio resource to the radio terminals or

communication connections in said first group. Therefore, the amendment of the claimed raise an issue of new matter.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Purnadi et al. (U.S PAT. 6,201,971 hereinafter, "Purnadi") in view of Dupont (U.S PAT. 5,729,542).

Regarding claims 1, 6, and 11, Purnadi discloses a radio communication system which allocates radio resource for a radio communication (col. 5 lines 63-65), said radio communication system comprising a radio terminals, wherein each of said radio terminals comprises a requiring part requiring a different communication quality to said radio communication system for each radio terminal or communication connection (col. 5 lines 55-65, the communication quality intended to ensure an appropriate level of communication quality between the mobile station and the network infrastructure read on each of said radio terminals or communication connections requires a different communication quality), and said radio communication apparatus comprises: a first retrieving part retrieving a first group including radio terminals or communication connections in which actual communication qualities are degraded more than required communication qualities (item 194), and a second group including radio terminals or communication connections in which actual communication qualities are favorable more than required communication qualities (item 190) (Fig. 7 col. 9 line 54 through col. 10 line 19). Purnadi differs from the claimed invention in not specifically teaching for a first allocating part allocating the radio resource to the radio terminals or communication connections in said first group with higher priority than the radio terminals or communication connections in said second group based on a priority order for allocating the radio resource to the radio terminals or communication connections in said first group. However, Dupont teaches for a first allocating part allocating the radio resource to the radio terminals or communication connections in said first group with higher priority than the radio terminals or communication connections in said second group

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based on a priority order for allocating the radio resource to the radio terminals or communication connections in said first group (col. 9 line 64 through col. 10 line 9). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Purnadi for a first allocating part allocating the radio resource to the radio terminals or communication connections in said first group with higher priority than the radio terminals or communication connections in said second group based on a priority order for allocating the radio resource to the radio terminals or communication connections in said first group, as per teaching of Dupont, because it provides a method and apparatus for accessing a communication system relies on the use of varying access probabilities for subscribers or messages of varying priority.

Regarding claims 2, 7, and 12, Dupont further teaches radio communication comprises: a second retrieving part retrieving a third group including radio terminals or communication connections that do not have required communication qualities (col. 5 line 61 through col. 6 line 11); a second allocating part allocating the radio resource to the radio terminals or communication connections in said third group when the radio resource is allocated to the radio terminals or communication connections in said first group and said second group by said first allocating part (col. 3 line 32 through col. 4 line 29).

Regarding claims 3 and 8, Purnadi further discloses first allocating part allocates the radio resource to the radio terminals or communication connections in said first

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group (read on degradation profile) in an ascending order (read on upgraded) of said actual communication qualities (col. 9 lines 39-44), an descending order (read on downgraded) of differences between said required communication qualities and said actual communication qualities, or an descending order of deterioration degrees of the actual communication qualities to the required communication qualities (col. 9 lines 34-44).

Regarding claims 4 and 9, Purnadi further discloses first allocating part allocates the radio resource to the radio terminals or communication connections in said second group (read on priority level) in an ascending order of said actual communication qualities (read on priority of access), an ascending order of differences between said required communication qualities and said actual communication qualities, or favorable degrees of the actual communication qualities to the required communication qualities (col. 9 lines 6-14).

Regarding claims 5 and 10, Purnadi further discloses required communication qualities are communication qualities concerning allowable delay times, transmission rates, or throughputs (col. 2 lines 27-38).

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any response to this action should be mailed to:

Mail Stop_____ (Explanation, e.g., Amendment or After-final, etc.)

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Facsimile responses should be faxed to:

(571) 273-8300

Hand-delivered responses should be brought to:

Customer Service Window

Randolph Building
401 Dulany Street
Alexandria, VA 22313

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan H. Nguyen whose telephone number is (571) 272-8329. The examiner can normally be reached on 8:00Am - 5:00Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Maung Nay A. can be reached on (571) 272-7882. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

Tuan Nguyen
Examiner
Art Unit 2643


NAY MAUNG
SUPERVISORY PATENT EXAMINER